

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CHRIS L. SMITH

Claimant

VS.

ROCK ROAD CAR WASH

Respondent

AND

ALLIED INSURANCE COMPANY

Insurance Carrier

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Docket No. 265,746

ORDER

Claimant appeals the August 21, 2001, preliminary hearing Order of Administrative Law Judge John D. Clark. Claimant was denied benefits after the Administrative Law Judge found claimant had not served written claim within 200 days of the accident or the last payment of benefits. Claimant disputes that finding, alleging the running of that time limit was tolled. That is the only issue on appeal before the Board at this time.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant suffered accidental injury on May 16, 1999, while working for respondent at its car wash. Claimant was in the process of wiping down the back of a white van when a Cadillac or a Lincoln rolled into him, pinning him between the car and the van. The Cadillac or Lincoln had no driver. Claimant suffered broken hips and a broken pelvis. Respondent filed its accident report on May 27, 1999, within 28 days, as required by K.S.A. 44-557 (Furse 1993).

Claimant was referred for medical treatment to orthopedic surgeon Robert L. Eyster, M.D. Dr. Eyster treated claimant and placed him on temporary restrictions. Dr. Eyster last saw claimant on June 29, 2000, at which time he opined claimant would have no permanent impairment as a result of the injuries suffered with respondent.

At the time of the accident, claimant, whose birthday is October 1, 1982, was 16 years old. Claimant contends the written claim statute, K.S.A. 44-520a (Furse 1993),

would not begin to run as, at the time of the accident, claimant was a minor. K.S.A. 44-509 (Furse 1993) states:

(a) In case an injured workman is an incapacitated person or a minor, or when death results from an injury in case any of his dependents, as herein defined, is an incapacitated person "or a minor" at the time when any right, privilege, or election accrues to him under the workmen's compensation act, his guardian or conservator may on his behalf, claim and exercise such right, privilege, or election, and no limitation of time, in the workmen's compensation act provided for, shall run, so long as such incapacitated person or minor has no guardian or conservator.

Respondent contends, as claimant's mother was involved in the obtaining of medical care, she would constitute claimant's natural guardian. Under Kansas law, a father and mother are considered natural guardians of the persons of their minor children. See K.S.A. 1998 Supp. 59-3002(e).

However, K.S.A. 1998 Supp. 59-3002(d), in discussing the definition of guardian, states, in part, "[g]uardian' does not mean natural guardian unless specified."

As nothing in the Workers Compensation Act and, more particularly, K.S.A. 44-509 (Furse 1993) specifies that a natural guardian will fulfill the requirements of K.S.A. 44-509 (Furse 1993), the Appeals Board finds that, absent a court order appointing her "guardian" as defined by K.S.A. 1998 Supp. 59-3002(d), claimant's mother does not qualify under K.S.A. 44-509 (Furse 1993). Therefore, her involvement in claimant's workers' compensation litigation would not deprive claimant of any rights under the Workers Compensation Act. Absent a court order appointing her claimant's legal guardian, the mother's involvement in the claim would not start the running of any time limits under the Kansas Workers Compensation Act.

Respondent's argument that claimant's written claim time ran during a first period where there was no payment of medical compensation for 200 days fails, as claimant was a minor during that period of time and a legal guardian had not been appointed as required by K.S.A. 44-509 (Furse 1993).

However, claimant was born on October 1, 1982. He turned 18 years of age on October 1, 2000, and the provisions of K.S.A. 44-509 (Furse 1993) were no longer applicable. As written claim was not submitted in this matter until May 14, 2001, 224 days after claimant turned 18, K.S.A. 44-520a (Furse 1993) prohibits the award of any benefits to claimant for failing to submit timely written claim.

The Appeals Board, therefore, finds that claimant has failed to provide timely written claim as required by K.S.A. 44-520 (Furse 1993) and affirms the Order of the Administrative Law Judge.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark, dated August 21, 2001, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of October, 2001.

BOARD MEMBER

c: Kevin T. Stamper, Attorney for Claimant
Richard J. Liby, Attorney for Respondent
John D. Clark, Administrative Law Judge
Philip S. Harness, Director